

Raja Ram Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/481540

Court : Allahabad

Decided On : Oct-05-1982

Reported in : 1983CriLJ188

Judge : P.N. Bakshi, J.

Appellant : Raja Ram

Respondent : State of U.P.

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicant has been convicted under Sections 7/16 of the Prevention of Food Adulteration Act, and sentenced to 6 months' R.I. and a fine of Rs. 1000/- His conviction and sentence has been maintained in appeal by the Sessions Judge Varanasi. Hence this revision.

2. It appears that a sample of mixed Cow and Buffalo milk was taken by the Food Inspector from the applicant, who was selling the same at about mid day on 24th December, 1979. On analysis by the Public Analyst it was found deficient in non-fatty solid contents by 14 per cent. The report of the Public Analyst was received on 28th January, 1980. After obtaining sanction for prosecution a complaint was filed against the accused on 7th May, 1981. On 19th June, 1981, the notice

contemplated under Section 13(2) was forwarded to the applicant along with the intimation Ex. Ka. 8, The accused admitted that he was selling milk, sample of which was taken by the Food Inspector against payment. He, however, denied that the sample was adulterated. He further denied that he had received the copy of the report of the Public Analyst.

3. Both the courts below on a consideration of the evidence on record have held the guilt of the accused fully established.

4. Counsel for the applicant has contended that on account of delay in the prosecution, the accused has been deprived of his valuable right under Section 13(2) of the Act of getting his sample reanalysed by the Central Food Laboratory. He has argued that in this long lapse of time intervening between the taking of the sample and the launching of the prosecution, the sample must have deteriorated and become incapable of analysis. In support of this, he has cited a single Judge decision of this Court Munna v. State of U. P. reported in- 1982 (UP) Cri R 73 : 1982 Cri LJ 884. In my opinion, the aforesaid case can no longer be considered to be good law after the decision of three Hon'ble Judges of the Supreme Court reported in : 1971 CriLJ1075 , Babu Lal Hargovind Das v. State of Gujarat. The relevant observations of the Supreme Court in this connection are as follows (para 6):

There is also in our view no justification for holding that the accused had no opportunity for sending the sample in his custody to the Director, Central Food Laboratory under Section 13(2) because he made no application to the court for sending it. It does not avail him at this stage to say that over four months had elapsed from the time the samples were taken to the time when the complaint was filed and consequently the sample had deteriorated and could not be analysed.

The above dictum of the Supreme Court leaves no room open for controversy that if an accused does not apply to the court under Section 13(2) for sending the sample to the Central Food Laboratory for re-analysis, it is not open to him to raise such a defence as narrated above.

5. It was next argued by the applicant's counsel that it was mandatory for the local health authority to send a copy of the report of analysis by registered post immediately after the institution of the prosecution under Rule 9(A) of the Rules framed under the Prevention of Food Adulteration Act. In the instant case complaint was filed on 7th May, 81, and the report of the Public Analyst, as abovementioned, was forwarded to the accused on 19th June, 1981. No questions have been put to the Public Analyst nor to the food Clerk Nagar Mahapalika who were both produced in evidence asking them to explain as to why the report was not sent to the accused earlier than 19th June, 1981, after launching of the prosecution. As a matter of fact, the accused denied the receipt of the report. I have already held earlier that only duty which has been cast upon the local health authority under Section 13(2) is to forward the report of the Public Analyst along with the intimation. If that is done at the correct address as in the present case, then the statutory duty cast upon the authority concerned is discharged, The word immediately in Rule 9(A) to my mind is merely directory and not mandatory. Circumstances may exist which might justifiably delay the sending of the report. It has been found by the courts below that the report of the Public Analyst was forwarded on 19th June, 1981 after the launching of the prosecution, as such in my opinion there has been substantial compliance of the law. No prejudice has been shown on the basis of which this Court would be entitled to interfere on this ground.

6. Learned Counsel has also argued that the sample was taken on 24th December, 1979, but the complaint was lodged on 7th May, 1981. It was the duty of the prosecution to explain this delay. I am afraid there is no substance in this argument. As abovementioned the Food Inspector and the clerk concerned, who had been produced with the relevant documentary evidence on record could have been questioned and cross-examined for the satisfaction of the accused, but there is no law to my mind which in the circumstances mentioned above can result in holding that the complaint dated 7-5-81 was belated and hence not maintainable.

7. For the reasons given above, I am of the opinion that there is no merit in this revision, which is hereby dismissed.

